SINGLE BENCH

P.R. No. 4750/05 Presented by Shri Jitendra Sinha Dated 14/9/05

6, S. 100/ (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

WRIT PETITION. NO. 4498 OF 2005

BETWEEN

Smt. Subiya Qureshi W/o Shri Shakil Qureshi , aged about 37 years, occupation service, working on the post of A.N.M. ,posted at Sub Health Centre Lalutoala ,Chhuriya Block and Tahsil Chhuriya District Rajnandgaon (CG).

PETITIONER

AND

1. The State of Chhattisgarh,
   Through the Secretary Department of Health and Family Welfare Mantralay, Chhattisgarh, D.K.S. Building, Raipur (C.G.)

2. The Director, Health Services, Chhattisgarh , Raipur, Tahsil and District Raipur (CG).

3. The Chief Medical and Health Officer, District Hospital Rajnandgaon District Rajnandgaon (CG).

4. The Block Medical Officer, Block and Tahsil Chhuriya , District Rajnandgaon (CG).

पथ आयुक्त बिलासपुर तहसील क्षेत्र 14/9/05

RESPONDENTS

WRIT PETITION UNDER ARTICLE 226/227 OF CONSTITUTION OF INDIA

RECEIVED-COPY 14/9/05 CLERK to A. G. BILASPUR

1. **PARTICULARS OF THE PETITIONER**
   As stated in the cause title above.

2. **PARTICULARS OF THE RESPONDENTS**
   As stated in the cause title above.

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मामला क्रमांक W.P. No. 4498 **सन् 2005**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

28.9.2005

Shri Jitendra Gupta, learned counsel for the petitioner.

Shri Pankaj Shrivastava, Panel Lawyer, for the state.

I.A.No.8062/2005

This is an application for urgent hearing. The matter is taken up on Board. This interim application stands disposed of.

Heard.

The petitioner, who is a lady aged about 37 years and is presently working as A.N.M. posted at Sub-health Center, Lalutola, Block & Tahsil Churia, Distt. Rajnandgaon (C.G) has challenged her transfer order dated 31.8.2005 (Annexure P-2) by which she has been transferred from the said place to Up-Swasth Kendra, Ruwatala, Block Dongargarh, Distt. Rajnandgaon.

Learned counsel for the petitioner submits that the petitioner is a lady and the new place of transfer is at a distance of 50 Kms. from her present place of posting. He further submits that the impugned order of transfer has been passed in the mid academic session and the same is against the transfer policy applicable in case of the petitioner. He also submits that it has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

not been shown in the transfer order that the same has been issued on administrative exigency and the aforesaid column of remark in the impugned order *Annexure P2* is kept as blank. Learned counsel submits that on these grounds the order of transfer of the petitioner is a mala fide order and the same should be quashed.

The law in relation to interference by the Courts in the matter of transfer is now well settled. The Apex Court while dealing with the matter of ***Kendrikya Vidya Sangathan –Vs- Damodar Prasad Pandey, 2004 AIR SCW 5563*** held that the transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by *mala-fide* or infraction of any prescribed norms of principles governing the transfer. (***Please see Ambani Kanta Ray –Vs- State of Orissa – 1995 (Suppl.) 4 SCC 169***). The Apex Court further held that unless the order of transfer is vitiated by mala fide or is made in violation of operative guidelines, the Court cannot interfere with it. ***(See Union of India –Vs- S.L. Abbas AIR 1993 SC 2444)***. Who should be transferred and posted where is

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it. In ***Union of India & others -Vs- Janardan Debanath & another (2004) 4 SCC 245***, it was observed by the Supreme Court as follows:

> *"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala-fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employee/management, as against such order passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in* ***National Hydroelectric Power Corpn. Ltd. -Vs- Shri Bhagwan (2001) 8 SCC 574.***

Learned counsel for the petitioner could not point out any specific grounds on the basis of which it can be assumed that the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

transfer of petitioner has been affected by *mala-fide* and the same is vitiated for the said reason.

So far as the points raised by the petitioner regarding her personal difficulties are concerned, in the opinion of this Court it is for the employer to look into the personal difficulties of the employee. The employer is always obliged to look into the personal grievances of his employee with a view to keep him/her in such a condition that he/she may render an excellent service to the employer. Keeping this principle in mind though I am not interfering with the order of transfer but I am directing that the petitioner may file a representation before the competent authority and if such a representation is filed the competent authority shall dispose of the same in accordance with law.

The petitioner, if so advised, may file a detailed representation raising all her grievances before the competent authority within a period of 3 weeks from today and if such a representation is filed, the competent authority shall be obliged to dispose of the same as early as possible preferably within a month from the date of filing of the aforesaid representation before him.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -S-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the meanwhile, the impugned order of transfer so far as it relates to the petitioner shall not be given effect to for a period of 8 weeks from today. This petition stands finally disposed of. Consequently, *M.W.P. No.3640 of 2005* for grant of interim relief also stands disposed of. C.C. as per rules. **Sd/-** **Sunil Kumar Sinha** **Judge**	